

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BERYL ANN WRIGHT,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A. et al.,

Defendants.

No. 4:16-CV-5155-EFS

**ORDER DENYING PLAINTIFF'S MOTION
TO REMAND AND FOR EMEGENCY
TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Before the Court, without oral argument, is Plaintiff Beryl Ann Wright's Motion to Remand Action to State Court and for Emergency Temporary Restraining Order and OSC Preliminary Injunction, ECF No. 14. On December 2, 2016, Defendant JPMorgan Chase Bank removed this civil lawsuit to federal court. ECF No. 1. In her motion, Plaintiff objects to this removal and also requests injunctive relief to prevent a foreclosure sale of her home.¹ Having reviewed the pleadings and the file in this matter, the Court is fully informed and

¹ It is unclear to the Court whether the property at issue in this case is owned by Ms. Wright or by her son, Anthony Malveto. As explained below, the mortgage documents are in Mr. Malveto's name. Ms. Wright declares, however, that she owns the property in fee simple absolute with her son. See ECF No. 1-1 at 1; ECF No. 14-1 at 32. When the Court uses the term "her home" or variants of that term, the Court refers only to Ms. Wright's purported interest in the property, while recognizing that there is no documentation in the record to support that purported interest.

1 denies both Plaintiff's motion to remand and her request for
2 injunctive relief.

3 **I. BACKGROUND**

4 On October 19, 2016, Beryl Ann Wright, a resident of College
5 Place, Washington, filed a civil complaint in Walla Walla County
6 Superior Court, Case No. 16-2-00708-3, alleging that Defendants are
7 unlawfully attempting to foreclose on Ms. Wright's house and have
8 engaged in unfair and deceptive practices. ECF No. 1-1. Ms. Wright's
9 allegations regarding the unlawful nature of the foreclosure rely in
10 part on her claim that the mortgage agreement was rescinded under the
11 Truth in Lending Act (TILA), but Defendant JPMorgan Chase disregarded
12 the rescission, and the Defendants continued in "wrongful and unlawful
13 collection" on the mortgage. ECF No. 1-1 at 10. Ms. Wright also claims
14 that the Defendants engaged in "unfair and deceptive acts and
15 practices" and that no valid mortgage contract exists regarding her
16 property. ECF No. 1-1 at 145. Although Ms. Wright does not expressly
17 make a claim under the Washington Consumer Protection Act (WCPA), RCW
18 19.86, her claim of unfair and deceptive acts and practices mirrors
19 some of the language in that Act. Ms. Wright also uses the term
20 "Consumer Protection Act" in one instance. ECF No. 14 at 3. Construing
21 Ms. Wright's claim liberally, as a pro se plaintiff, the Court finds
22 that Ms. Wright has alleged violations of the WCPA. Based on her
23 claims, Ms. Wright seeks a preliminary injunction and a permanent
24 injunction preventing foreclosure on her house and requiring the
25 reversal of negative credit reports, return of all payments made on
26 the mortgage, payment for damages, and legal fees. ECF No. 1-1 at 16.

1 Defendant JPMorgan Chase's removal of this action followed. ECF
2 No. 1. On December 15, 2016, Ms. Wright filed the instant Motion to
3 Remand to State Court and for Emergency Temporary Restraining Order
4 and OSC Preliminary Injunction. ECF No. 14. Ms. Wright argues that
5 this Court does not have jurisdiction over her land and lacks personal
6 jurisdiction over her and subject matter jurisdiction over this case.
7 ECF No. 14 at 3. She also argues that Defendants removed this action
8 in bad faith. ECF No. 14 at 6.

9 II. STANDING

10 As an initial matter, the Court must address whether Ms. Wright
11 has standing to bring this claim in federal court. Article III of the
12 Constitution limits a federal court's judicial power to "cases" and
13 "controversies." U.S. Const. art. III. To ensure that a federal court
14 exercises its power over only a case or controversy, a plaintiff must
15 have standing. *Warth v. Seldin*, 422 U.S. 490, 498 (1975). To establish
16 this standing, a plaintiff must show (1) an actual or imminent injury
17 that is concrete and particularized ("injury-in-fact"), (2) a causal
18 connection between the injury-in-fact and challenged conduct, and (3)
19 a substantial likelihood that the relief requested will prevent or
20 redress the injury-in-fact. *Lujan v. Defenders of Wildlife*, 504 U.S.
21 555, 560-61 (1992); *Covington v. Jefferson Cty.*, 358 F.3d 626, 637-38
22 (9th Cir. 2004).

23 In this case, it is not immediately clear that Ms. Wright has a
24 legally protected interest in the property at issue. She is not named
25 in, and her signature does not appear on, the mortgage note or the
26 deed. Instead, Ms. Wright's son, Anthony John Malveto, is the party

1 named in those documents. See ECF Nos. 9-1 & 9-2. The Court therefore
2 finds that Ms. Wright likely could not bring a claim under TILA based
3 on the mortgage agreement, to which she was not a party. See *In re*
4 *Crevier*, 820 F.2d 1553, 1555 (9th Cir. 1987)(noting that a lower court
5 employed the "judicially imposed prudential rule of standing that bars
6 a litigant from asserting the rights of others" to dismiss a TILA
7 claim for lack of standing); see also *Frempong v. Nat'l City Bank of*
8 *Ind.*, 452 F. App'x 167 (3d Cir. 2011) (holding that a plaintiff had
9 "no direct interest in the property or the foreclosure action as a
10 result of the fact that he was not contractually obligated to the
11 mortgage," despite the fact that plaintiff lived on the property and
12 his wife was the party named in the deed); *Mashburn v. Wells Fargo*
13 *Bank, NA*, 2011 WL 2940363, *3 (W.D. Wash. July 19, 2011) ("Since
14 Plaintiff Hayakawa was not an obligor on the loan and had no right of
15 rescission, Plaintiff Hayakawa does not have standing to bring the
16 present TILA claim.").

17 In this case, however, Ms. Wright is not asserting a claim under
18 TILA, but is instead asserting a claim based on allegedly unlawful,
19 unfair, and deceptive practices regarding the foreclosure on her
20 house. The issue of prudential standing again arises, as there is no
21 documentation indicating that Ms. Wright is the record owner of the
22 property, and all evidence instead indicates that her son is the legal
23 owner of the property. Nevertheless, when analyzing standing to
24 contest forfeiture the Ninth Circuit has indicated, that "[a]
25 claimant's 'unequivocal' assertion of ownership in the seized
26 property, along with physical possession of the property at the time

1 of seizure, can overcome the summary judgment hurdle." *United States*
2 *v. JP Morgan Chase Bank Account No. Ending 8215 in Name of Ladislao V.*
3 *Samaneigo*, 835 F.3d 1159, 1164-65 (9th Cir. 2016). The Court finds
4 this reasoning instructive.

5 As to the property at issue here, Ms. Wright claims to be a
6 "joint owner in fee simple with her Son." ECF No. 1-1 at 1; *see also*
7 ECF No. 14-1 at 32 ("THIS CERTIFIES that Anthony John Malveto and
8 Beryl Ann Wright are joint owners in fee simple absolute, as assignees
9 for valuable consideration of the following-described personal and
10 natural family homestead"). Ms. Wright also seems to have
11 physical possession of the property at issue. If Ms. Wright has an
12 ownership interest, a possessory interest, or both, in the property,
13 based on an agreement with her son or otherwise, that interest is
14 likely sufficient for standing purposes. *See Gibson v. PNC Bank Nat'l*
15 *Assoc.*, 2016 WL 7131518, at *1 (9th Cir. Dec. 7, 2016) (unpublished)
16 (holding that a Plaintiff "has standing to challenge the foreclosure
17 and sale based on the property interest he acquired via his quitclaim
18 deed" despite not being a party to the note or deed foreclosed upon);
19 *see also Hurst v. Fed. Nat'l Mortg. Ass'n*, 642 F. App'x 533, 537 (6th
20 Cir. 2016) (holding that a plaintiff had standing to contest a
21 foreclosure where the plaintiff claimed that she had the right to
22 purchase the property at the redemption price based on property or
23 inheritance rights).²

24
25 ² In *Hurst*, the Sixth Circuit noted that "the facts alleged in the complaint
26 render the legitimacy of Plaintiff's interest – as well as the allegedly
defective foreclosure's effect on that interest – suspect. But those issues
go more to the merits of Plaintiff's claims rather than her standing to
bring them." 642 F. App'x at 537.

1 Based on that reasoning, Ms. Wright satisfies the elements of
2 standing here: (1) she would suffer an imminent, legally protected
3 injury if her property rights were impaired by foreclosure; (2)
4 Defendants' foreclosure attempts are the cause of that imminent
5 injury; and (3) the Court could redress the injury by granting Ms.
6 Wright's claim for injunctive relief to prevent foreclosure. The Court
7 therefore finds that Ms. Wright has standing to bring this claim in
8 federal court.

9 **III. MOTION FOR WITHDRAWAL AND MOTION TO STRIKE**

10 Ms. Wright has filed two additional motions relevant to her
11 motion to remand and for preliminary injunction that can be disposed
12 of prior to addressing the substantive issues of that motion. On
13 January 5, 2017, Ms. Wright filed a Notice of Withdrawal and
14 Withdrawal of Motion for TRO and OSC Re: Preliminary Injunction and
15 Proposed Order, by Affidavit. ECF No. 21. The Clerk's Office construed
16 this filing as a Motion for Withdrawal. In this filing, Ms. Wright
17 requests withdrawal of the proposed orders she attached to her motion
18 to remand and also appears to request withdrawal of the portion of her
19 remand motion requesting injunctive relief. Ms. Wright indicates that
20 she requests withdrawal because she does not believe that the Court
21 has jurisdiction to grant such relief. In the motion for withdrawal,
22 however, Ms. Wright also seems to ask the Court to exercise whatever
23 ability it has to grant injunctive relief:

24 If this court has further restraining and enjoining powers
25 without jurisdiction and venue, in that instance only,
26 without waiving any rights in law and equity, I invoke this
court to exercise such power to order defendants to cease

1 ALL collection activities described in my proposed order
2 pending remand

3 ECF No. 21 at 3. This conditional language makes Ms. Wright's motion
4 to withdraw somewhat unclear. Still, based on the above-quoted
5 statement, it appears clear to the Court that Ms. Wright continues to
6 request that the Court grant injunctive relief to the extent possible.

7 Because the Court finds that it has jurisdiction over this case,
8 as outlined below, the Court understands Ms. Wright to continue to
9 request injunctive relief. Accordingly, the Court denies Ms. Wright's
10 motion to withdraw her request for injunctive relief as moot, finding
11 that the request to withdraw was conditional on a finding that the
12 Court did not have jurisdiction. Because the Court denies injunctive
13 relief, as outlined below, Ms. Wright's request to withdraw her
14 proposed orders granting such relief is also denied as moot.

15 In addition, on January 20, 2017, Ms. Wright filed a Motion to
16 Strike the request for oral argument included in her Reply regarding
17 the Motion for Remand. ECF No. 27. In Ms. Wright's Motion for Remand,
18 ECF No. 14, she did not elect oral argument. Nor did Chase elect oral
19 argument in its Response. See ECF No. 19. Under Local Rule 7.1(h)(3),
20 oral argument was therefore waived, and a party would be required to
21 file a motion in order to elect oral argument. Accordingly, Ms.
22 Wright's inclusion of the phrase "oral argument requested" in the
23 caption to her Reply was insufficient to elect oral argument and need
24 not be stricken. The Motion to Strike is therefore denied as moot.

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IV. REMAND MOTION

Turning to Ms. Wright's Motion to Remand, 28 U.S.C. § 1447(c) provides, "[a] motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a)." 28 U.S.C. § 1447(c). Ms. Wright timely filed her motion to remand; her removal objections were filed on December 15, 2016, less than thirty days after the removal. Although JPMorgan Chase's removal of this action appears unfair from Ms. Wright's perspective, the Court finds that removal is permitted by federal law. For the reasons outlined below, the Court denies Ms. Wright's Motion to Remand.

A. Federal Subject Matter Jurisdiction

A state court defendant may remove to federal court any state court action that could have been brought under the original jurisdiction of the federal court – that is, claims based on a federal question or involving diversity of citizenship. 28 U.S.C. § 1441. Federal question subject matter jurisdiction exists if the civil action arises "under the Constitution, laws, or treaties of the United States." *Id.*; see also 28 U.S.C. § 1331. "[A] case may arise under federal law 'where the vindication of a right under state law necessarily turn[s] on some construction of federal law.'" *Int'l Union of Operating Eng'rs v. Cty. of Plumas*, 559 F.3d 104, 1044 (9th Cir. 2009) (quoting *Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 808 (1986)) (internal quotation marks omitted). Diversity of citizenship subject matter jurisdiction exists if the amount in controversy is greater than \$75,000 and the parties are diverse. *Id.*

1 28 U.S.C. § 1332. State law claims over which a federal court would
2 not have original jurisdiction may also be addressed by a federal
3 court if the state law claims "are so related to claims in the action
4 within such original jurisdiction that they form part of the same case
5 or controversy under Article III of the United States Constitution."

6 28 U.S.C. § 1367. The removing defendant has the burden of
7 establishing federal jurisdiction. *Emrich v. Touche Ross & Co.*, 846
8 F.2d 1190, 1195 (9th Cir. 1988) (citing *Wilson v. Republic Iron &*
9 *Steel Co.*, 257 U.S. 92, 97 (1921)).

10 Here, federal question subject matter jurisdiction exists
11 because Ms. Wright's claims, as alleged in her complaint, require
12 interpretation of TILA, a federal statute. She argues that the
13 Defendants are attempting to unlawfully foreclose on her house. ECF
14 No. 1-1. This claim is based on the facts recited in her complaint,
15 including statements such as, "On 5/13/2015, the hearsay note & DT
16 [deed of trust] were rescinded under the Truth In Lending Act, Title
17 15 United States Code (USC) Chapter 41, specifically § 1635," "Chase
18 ignored, neglected, and disregarded the TILA rescission and the
19 general claims cancellation," and "Chase and QLSCW continued ongoing
20 wrongful and unlawful collection on the rescinded, cancelled hearsay
21 note & DT." ECF No. 1-1 at 10. Ms. Wright also noted in her complaint
22 that: "the hearsay note & DT alleged to represent the alleged debt and
23 basis of the intended foreclosure are in contravention of Washington
24 and *federal law*." ECF No. 1-1 at 7 (emphasis added). In her motion for
25 remand, Ms. Wright again indicated her claim's partial basis in TILA,
26 stating: "Plaintiff moves this Court to take mandatory judicial notice

1 of its duty to enforce the TILA rescission, now that it is in front of
2 it by the defendants' hands." ECF No. 14 at 6. Plaintiff's claims
3 require that the Court determine whether a valid mortgage exists –
4 including whether a valid rescission took place under the federal TILA
5 – in order to determine whether the foreclosure is lawful.
6 Accordingly, this civil action turns on the interpretation of a law of
7 the United States, and federal question subject matter jurisdiction
8 exists. See 28 U.S.C. § 1331.

9 There is also supplemental jurisdiction over the state law
10 claims under the WCPA based on supplemental jurisdiction. Both a
11 finding as to whether there was a valid rescission under TILA and a
12 finding as to whether the WCPA was violated are essential to
13 determining whether the foreclosure at issue is lawful. In addition,
14 both the TILA rescission and the WCPA questions involve assessment of
15 the mortgage transaction and any errors or violations in the execution
16 of that transaction. The Court therefore finds that the federal issues
17 and state law issues "form part of the same case or controversy." 28
18 U.S.C. § 1367.

19 The Court need not reach the question of whether diversity
20 jurisdiction also exists in this case, although the Court notes that
21 the amount in controversy requirement is satisfied here, as the
22 remaining balance of the mortgage is greater than \$75,000. See ECF
23 No. 14-1 at 21. In addition, diversity of citizenship clearly exists
24 for all Defendants apart from Quality Loan Service Corporation of
25 Washington. The only question, therefore, would be whether Quality
26 Loan Service Corporation of Washington is a nominal Defendant, as

1 alleged by Defendant JPMorgan Chase, see ECF No. 19 at 5. The Court
2 need not decide that issue at this time.

3 To the extent Ms. Wright requests to amend her complaint in
4 order to eliminate federal subject matter jurisdiction, ECF No. 26 at
5 8, that request is denied. The Ninth Circuit has made clear that
6 "jurisdiction must be analyzed on the basis of the pleadings filed at
7 the time of removal without reference to subsequent amendments."
8 *Sparta Surgical Corp. v. Nat'l Ass'n of Sec. Dealers Inc.*, 159 F.3d
9 1209, 1213 (9th Cir. 1998), *abrogated on other grounds by Merrill*
10 *Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 136 S. Ct. 1562 (2016).
11 "[A] plaintiff may not compel remand by amending a complaint to
12 eliminate the federal question upon which removal was based." *Id.*

13 **B. Personal Jurisdiction**

14 The Court also has personal jurisdiction over Ms. Wright. The
15 record indicates that Ms. Wright is physically present in the Eastern
16 District of Washington and has resided in the district at all times
17 relevant to this case. As a result, in personam jurisdiction exists.
18 See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925
19 (2011) ("For an individual, the paradigm forum for the exercise of
20 general jurisdiction is the individual's domicile[.]"); *Burnham v.*
21 *Sup. Ct. of Cal.*, 495 U.S. 604, 619 (1990) ("[J]urisdiction based on
22 physical presence alone constitutes due process because it is one of
23 the continuing traditions of our legal system that define the due
24 process standard of 'traditional notions of fair play and substantial
25 justice.'"). The Court also has jurisdiction over the property at
26

1 issue in this case, as it is located in the Eastern District of
2 Washington.

3 C. Venue

4 In addition, venue is appropriate in the Eastern District of
5 Washington. For cases that have been removed to federal court, venue
6 is governed by 28 U.S.C. § 1441. *Polizzi v. Cowles Magazines, Inc.*,
7 345 U.S. 663, 665 (1953). Section 1441 states:

8 [A]ny civil action brought in a State court of which the
9 district courts of the United States have original
10 jurisdiction, may be removed by the defendant or the
11 defendants, to the district court of the United States for
the district and division embracing the place where such
action is pending.

12 The Eastern District of Washington is the federal district associated
13 with the state court where Ms. Wright filed her complaint, so venue is
14 appropriate in this Court based on Ms. Wright's original choice of
15 filing in Walla Walla County.

16 V. MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY

17 INJUNCTION

18 In her motion, Ms. Wright also requested both a temporary
19 restraining order and a preliminary injunction, with the goal of
20 preventing Defendants from foreclosing on her house.³ The analysis for
21 issuance of a preliminary injunction is generally as follows: "A
22 plaintiff seeking a preliminary injunction must establish that he is
23 likely to succeed on the merits, that he is likely to suffer
24 irreparable harm in the absence of preliminary relief, that the
25 balance of equities tips in his favor, and that an injunction is in

26 ³ The foreclosure was originally scheduled for December 15, 2016, ECF No. 14-
1 at 2, but Plaintiff has since indicated that the sale is now scheduled
for February 10, 2017, ECF No. 21 at 3.

1 the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S.
2 7, 20 (2008). Under this inquiry, "courts must balance the competing
3 claims of injury and must consider the effect on each party of the
4 granting or withholding of the requested relief." *Id.* at 24 (internal
5 quotation marks omitted). If a court finds, however, that there is a
6 complete lack of probability of success on the merits, no further
7 findings are necessary. *Daniels v. Cmty. Lending, Inc.*, 621 F. App'x
8 427, 427 (9th Cir. 2015) (citing *Flexible Lifeline Sys., Inc. v.*
9 *Precision Lift, Inc.*, 654 F.3d 989, 993-94 (9th Cir. 2011) (per
10 curiam); *Global Horizons, Inc. v. U.S. Dep't of Labor*, 510 F.3d 1054,
11 1058 (9th Cir. 2007)).

12 The Ninth Circuit has noted that the analysis for issuance of a
13 temporary restraining order is "substantially identical" to the
14 analysis for issuance of a preliminary injunction. *Stuhlbarg Int'l*
15 *Sales Co., Inc. v. John D. Brush and Co., Inc.*, 240 F.3d 832, 839 n.7
16 (9th Cir. 2001). The primary differences between a temporary
17 restraining order and a preliminary injunction are the duration of the
18 injunction and the availability of argument prior to issuance of the
19 injunction. *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 804 (9th Cir.
20 2002). A temporary restraining order may last no longer than 14 days
21 and argument is not required prior to issuance of the order. Fed. R.
22 Civ. P. 65. In this case, Ms. Wright is requesting ongoing relief, and
23 the parties have had time to fully brief the issue, so the Court will
24 treat the request as one for a preliminary injunction.

25 The Court finds that, at this juncture, Ms. Wright has not
26 demonstrated a likelihood of success in this case on any issue that

1 would affect the validity of the foreclosure. The Court therefore
2 denies Plaintiff's motion for injunctive relief without reaching the
3 other preliminary injunction factors. *See Daniels*, 621 F. App'x at 427
4 ("The district court did not abuse its discretion by denying
5 plaintiffs' motion for a preliminary injunction after . . . concluding
6 that plaintiffs had failed to establish a likelihood of success on the
7 merits with regard to any claim that could affect the validity of the
8 foreclosure.").

9 First, Ms. Wright has not provided evidence of a valid
10 rescission under TILA. TILA provides borrowers with the right to
11 rescind certain consumer transactions. 15 U.S.C. § 1635(a). The
12 rescission right extends to "each consumer whose ownership interest is
13 or will be subject to the security interest." 12 C.F.R. § 226.15(a).
14 Under 15 U.S.C. § 1635(f): "An obligor's right of rescission shall
15 expire three years after the date of consummation of the transaction
16 or upon the sale of the property, whichever occurs first,
17 notwithstanding the fact that the information and forms required under
18 this section or any other disclosures required under this chapter have
19 not been delivered to the obligor." Consummation is defined under
20 Regulation Z as the point when the borrower becomes contractually
21 obligated on the loan. 12 C.F.R. § 226(a)(13). The Ninth Circuit has
22 explained that when a borrower is contractually obligated is defined
23 by state law. *Jackson v. Grant*, 890 F.2d 118, 120 (9th Cir. 1989). In
24 Washington, a contract is created when the essential elements of a
25 contract, "the subject matter of the contract, the parties, the
26 promise, the terms and conditions, and (in some but not all

jurisdictions) the price or consideration," have been included in the agreement. *DePhillips v. Zolt Const. Co., Inc.*, 959 P.2d 1104 (Wash. 1998).

Ms. Wright's son, Mr. Malveto, signed the mortgage documents on August 1, 2003. ECF Nos. 9-1 & 9-2. There is no evidence to support a finding that any essential contract terms were missing from the documents. According, the Court finds that the mortgage transaction was likely consummated shortly after its execution, as demonstrated by the fact that Mr. Malveto made payments on the loan between 2003 and 2011. ECF No. 9-4 at 3. Ms. Wright claims that the transaction was rescinded on May 13, 2015. ECF No. 14 at 10; see also ECF No. 14-1 at 31. The statutory time period for rescission concluded long before May 13, 2015, making any rescission at that time ineffective. See *Miguel v. Country Funding Corp.*, 309 F.3d 1161, 1164 (9th Cir. 2002) ("[S]ection 1635(f) represents an 'absolute limitation on rescission actions' which bars any claims filed more than three years after the consummation of the transaction." (quoting *King v. California*, 784 F.2d 910, 913 (9th Cir. 1986))).

Even if the notice of rescission had been sent within the statutory time period, Plaintiff presents no evidence of a TILA violation in the creation of the mortgage agreement. Mr. Malveto apparently attempted to rescind the loan transaction based on the following:

[U]nder the three day rule, the three year limitation, and under the usury, extortion, lack of disclosure, misrepresentation, ultra vires, unconscionability, unfair trade practice, and deprivation of fundamental human rights, including, but not limited to, the intangible

1 rights to receive honest services and to be free from being
2 deceived into violation of the state of Washington
3 Constitution Article 12 Section 11 and general claims
4 theories and causes of action for deceptive and unfair
5 business practices have made my alleged obligation to be
6 void and unenforceable from its first alleged inception. By
7 failing to disclose that the "borrower" is not a consumer
8 for personal, family or household purposes, as myself
9 seeking a consumer loan solely for those purposes, and by
10 failing to disclose the true lender and using subterfuge to
11 hide the fact that the "lender at closing was paid to pose
12 as the lender when in fact an undisclosed unregistered
13 third party had rented the charter or lending license of
14 the "lender", and for these facts constituting the creation
15 of an unconscionable contract the limitation on my right to
16 rescind was extended indefinitely. For refusal, failure,
17 and/or neglect to provide all lawfully required loan
18 disclosures from inception of the original alleged "loan",
19 I, Anthony John Malveto, do hereby rescind/cancel "loan
20 number 48580583" and all pertaining to and in relation
21 thereto every time, in every place, by every device,
22 to/for/by all persons, and for all purposes, including but
23 not limited to all related prior and/or subsequent alleged
24 loans, information, applications, modifications, business,
25 instrument, document, alleged transactions, and all of
26 every nature relevant thereto.

ECF No. 14-1 at 38-39. Mr. Malveto separately alleged appraisal fraud,
fraud in the inducement, fraud in the execution, and usury. ECF
No. 14-1 at 40-41. Most of these claims are not of the type for which
rescission under TILA would be allowed. See 15 U.S.C. § 1635; 12
C.F.R. §§ 226.18, 226.23(a)(3). In addition, at this time, there is no
evidence in the record beyond the bare assertions of Ms. Wright and
Mr. Malveto to support the alleged grounds for TILA rescission. The
Court therefore finds that Ms. Wright is unlikely to succeed on the
merits of her claim regarding TILA rescission.

In addition, neither Plaintiff nor her son has returned the loan
proceeds from the mortgage transaction, and Plaintiff remains in
possession of the property purchased with those loan proceeds. See

1 *Semar v Platte Valley Fed. Sav. & Loan Ass'n*, 791 F.2d 699, 702 (9th
2 Cir. 1986) ("Under a TILA rescission, the security interest is
3 dissolved, the lender returns the borrower's payments, and the
4 borrower returns the loan proceeds, less any finance or other charge."
5 (citing 15 U.S.C. § 1635(b))). As a result, Mr. Malveto has not
6 satisfied the borrower obligations that would have been required had a
7 valid rescission occurred.

8 There is also no evidence in the record that either Ms. Wright
9 or Mr. Malveto intends to return the loan proceeds. Instead, Ms.
10 Wright's statements indicate that she believes no debt is owed to the
11 Defendants by her or her son. See, e.g., ECF No. 1-1 at 3 ("Chase and
12 QLSCW continued ongoing wrongful and unlawful collection on the
13 rescinded, cancelled hearsay not & DT."); ECF No. 1-1 at 7 ("[T]he
14 facts obtained on the record by discovery will reveal . . . that the
15 alleged note & DT were never in default."). A court need not approve a
16 rescission if it is clear that the borrower will not satisfy its
17 obligations upon rescission. *Yamamoto v. Bank of N.Y.*, 329 F.3d 1167,
18 1173 (9th Cir. 2003) ("[A] court may impose conditions on rescission
19 that assure that the borrower meets her obligations once the creditor
20 has performed its obligations.").

21 Second, to the extent Ms. Wright has stated a claim under the
22 WCPA, Ms. Wright has not provided evidence of a violation of that Act.
23 The statutory time period for a WCPA claim concluded long before the
24 filing of this action. See RCW 19.86.120 ("Any action to enforce a
25 claim for damages under RCW 19.86.090 shall be forever barred unless
26 commenced within four years after the cause of action accrues[.]"). In

1 addition, Ms. Wright has not provided evidence to support her claim
2 for violation of the WCPA. In the complaint, Plaintiff argues that the
3 mortgage transaction was invalid because "a. there is no document
4 signed by both parties; b. they are adhesion contracts; c. there was
5 no bargaining over terms and conditions; d. there was no meeting of
6 the minds into mutually agreed terms and conditions; e. the
7 'consideration' which each party was to provide under the contract was
8 never mutually agreed to, and/or was never performed." ECF No. 1-1 at
9 8. Ms. Wright has not, however, provided evidence to support these
10 allegations. In addition, Defendant Chase has raised the argument that
11 Ms. Wright is barred from asserting the WCPA claims based on res
12 judicata stemming from a prior Washington State Court judgment. See
13 ECF No. 9 at 10. For these reasons, based on the evidence currently
14 before it, the Court finds that Ms. Wright is unlikely to succeed on
15 her WCPA claims.

16 Third, because at this time there is no evidence of a valid
17 rescission under TILA and there is no support in the record for Ms.
18 Wright's claim that the mortgage agreement was an invalid contract
19 under the WCPA or otherwise, Ms. Wright has failed to establish that
20 the foreclosure is unlawful. If the mortgage agreement was not
21 rescinded and was otherwise valid, then the holder of the mortgage
22 note would be authorized to foreclose on the property upon the
23 borrower's default. Ms. Wright does not seem to contest the allegation
24 that neither she nor Mr. Malveto has been making payments on the
25 mortgage, but instead argues only that they are not required to make
26 such payments. This failure to make payments, without a valid

1 rescission or invalidation of the mortgage, appears to constitute
2 default sufficient to justify foreclosure.

3 The Court finds that, at this time, Ms. Wright has failed to
4 establish a likelihood of success on the merits that would affect the
5 validity of the foreclosure action. This finding alone is sufficient
6 to justify denial of her request for a preliminary injunction.

7 In addition to her failure to prove a likelihood of success on
8 the merits, the Court finds that Ms. Wright is also barred from
9 equitable relief by the doctrine of unclean hands. *Silvas v. G.E.*
10 *Money Bank*, 449 F. App'x 641, 644 (9th Cir. 2011). In *Silvas*, the
11 Ninth Circuit affirmed the denial of a preliminary injunction to
12 prevent foreclosure based on the doctrine of unclean hands, noting
13 that the Plaintiff "wishes to continue to live in her house, but she
14 has not offered to make any payments on her loan, she did not tender
15 any payments when she sought rescission, nor is she able to repay the
16 loan at this time." *Id.* As explained above, because Ms. Wright
17 maintains possession of the property purchased with the loan proceeds
18 from the mortgage transaction with Defendants, and neither she nor Mr.
19 Malveto have repaid the loan proceeds or offered to do so, Ms. Wright
20 cannot now seek judicial interference to prevent sale of the property.

21 Accordingly, **IT IS HEREBY ORDERED:**

22 1. Plaintiff's Motion to Remand Action to State Court and for
23 Emergency Temporary Restraining Order and OSC Preliminary
24 Injunction, **ECF No. 14**, is **DENIED**.

25 2. Plaintiff's construed Motion for Notice of Withdrawal and
26 Motion for Withdrawal of Motion for TRO and OSC RE:

1 Preliminary Injunction and Proposed Order, **ECF No. 21**, is
2 **DENIED AS MOOT.**

3 **3.** Plaintiff's Motion to Strike, **ECF No. 27**, is **DENIED AS**
4 **MOOT.**

5 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
6 Order and provide copies to all counsel.

7 **DATED** this 2nd day of February 2017.

8 s/Edward F. Shea

9 EDWARD F. SHEA

10 Senior United States District Judge
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